

- (i) Records described in paragraph (d)(1) of this section; or
- (ii) Department records.

(e) The Secretary does not base the determination or redetermination of an LEA's eligibility under this section upon secondary documentation such as estimates, certifications, or appraisals.

(Authority: 20 U.S.C. 7702(a)(1))

**§ 222.22 How does the Secretary treat compensation from Federal activities for purposes of determining eligibility and payments?**

(a) An LEA with an otherwise approvable application is eligible to receive assistance under section 8002 for a fiscal year only if the LEA meets the requirements in subpart A of these regulations and § 222.21, and is not substantially compensated, for the loss in revenue resulting from Federal ownership of real property by increases in revenue accruing to the LEA during the previous fiscal year from Federal activities with respect to the eligible Federal property in the LEA.

(b) The Secretary considers that an LEA is substantially compensated by increases in revenue from Federal activities with respect to the eligible Federal property if—

(1) The LEA received new or increased revenue during the preceding fiscal year that is generated directly from the eligible Federal property or activities in or on that property; and

(2) The revenue described in paragraph (b)(1) of this section equals or exceeds the maximum payment amount under section 8002(b) for the fiscal year for which the LEA seeks assistance.

(c) If an LEA described in paragraph (a) of this section received revenue described in paragraph (b)(1) of this section during the preceding fiscal year that is less than the maximum payment amount calculated under section 8002(b)(2) for the fiscal year for which the LEA seeks assistance, the Secretary reduces that maximum payment amount by the amount of that revenue received by the LEA.

(d) For purposes of this section, the amount of revenue that an LEA receives during the previous fiscal year from activities conducted on Federal property does not include the following:

(1) Payments received by the agency from the Secretary of Defense to support—

(i) The operation of a domestic dependent elementary or secondary school; or

(ii) The provision of a free public education to dependents of members of the Armed Forces residing on or near a military installation.

(2) Federal payments-in-lieu-of-taxes (PILOTs or PILTs), including PILTs for Federal entitlement lands authorized by Public Law 97-258, 31 U.S.C. 6901—6906.

(Authority: 20 U.S.C. 7702(a)(2) and (b)(1)(A))

[60 FR 50778, Sept. 29, 1995, as amended at 62 FR 35414, July 1, 1997]

**§ 222.23 How does a local official determine the aggregate assessed value of eligible Federal property for the purpose of a local educational agency's section 8002 payment?**

(a) The aggregate assessed value of eligible Federal property for the purpose of an LEA's section 8002 payment must be determined, by a local official responsible for assessing the value of real property located in the jurisdiction of the LEA for the purpose of levying a property tax, as follows:

(1) The local official first determines a fair market value (FMV) for the eligible Federal property in each Federal installation or other federally owned property (e.g., Federal forest), based on the highest and best use of taxable properties adjacent to the eligible Federal property.

(2) The local official then determines a section 8002 assessed value for each Federal installation or federally owned property by adjusting the FMV established in paragraph (a)(1) of this section by any percentage, ratio, index, or other factor that the official would use, if the eligible Federal property were taxable, to determine its assessed value for the purpose of generating local real property tax revenues for current expenditures. In making this adjustment, the official may assume that there was a transfer of ownership of the eligible Federal property for the year for which the section 8002 assessed value is being determined.

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(3) The local official then calculates the aggregate section 8002 assessed value for all eligible Federal property in the LEA by adding the section 8002 assessed values for each different Federal installation or federally owned property determined in paragraph (a)(2) of this section.

*Example:* Two different Federal properties are located within an LEA—a Federal forest, and a naval facility. Based upon the highest and best use of taxable properties adjacent to the eligible Federal property, the local assessor establishes a FMV for the Federal forest of \$1 million (woodland), and a FMV for the naval facility of \$3 million (50 percent residential and 50 percent commercial/industrial). Assessed values in that taxing jurisdiction are determined by multiplying the FMV of property by an assessment ratio—the assessment ratio for woodland property is 30 percent of FMV, for residential 60 percent of FMV, and for commercial 75 percent of FMV.

To determine the section 8002 assessed value of the Federal forest, the assessor multiplies the FMV for that property (\$1,000,000) by 30 percent (the assessment ratio for woodland property), resulting in a section 8002 assessed value of \$300,000.

To determine the section 8002 assessed value for the naval facility, the assessor first must determine the portion of the total FMV attributable to each property type if that portion has not already been established. To make this determination for the residential portion, the assessor could multiply the total FMV (\$3,000,000) for the naval facility by 50 percent (the portion of residential property), resulting in a \$1.5 million FMV for the residential property. To determine a section 8002 assessed value for this residential portion, the assessor then would multiply the \$1.5 million by 60 percent (assessment ratio for residential property), resulting in \$900,000.

Similarly, to determine the portion of the FMV for the naval facility attributable to the commercial/industrial property, the assessor could multiply the total FMV (\$3,000,000) by 50 percent (the portion of commercial/industrial property), resulting in \$1.5 million. To determine the section 8002 assessed value for this commercial/industrial portion, the official then would multiply the \$1.5 million by 75 percent (the assessment ratio for commercial/industrial property), resulting in \$1,025,000. The assessor then must add the section 8002 assessed value figures for the residential portion (\$900,000) and for the commercial/industrial portion (\$1,025,000), resulting in a total section 8002 assessed value for the entire naval facility of \$1,925,000.

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Finally, the assessor determines the aggregate section 8002 assessed value for the LEA by adding the section 8002 assessed value for the Federal forest (\$300,000), and the section 8002 assessed value for the naval facility (\$1,925,000), resulting in an aggregate assessed value of \$2,325,000.

(b) For the purpose of this section, the terms listed below have the following meanings:

(1) *Adjacent* means next to or close to the eligible Federal property. In most cases, this will be the closest taxable parcels.

(2)(i) *Highest and best use* of a parcel of adjacent property means the FMV of that parcel determined based upon a “highest and best use” standard in accordance with State or local law or guidelines if available. To the extent that State or local law or guidelines are not available, “highest and best use” generally will be a reasonable fair market value based upon the current use of those properties. However, the local official may also consider the most developed and profitable use for which the adjacent taxable property is physically adaptable *and* for which there is a need or demand for that use in the near future.

(ii) A local official may not base the “highest and best use” value of adjacent taxable property upon potential uses that are speculative or remote.

(iii) If the taxable properties adjacent to the eligible Federal property have different highest and best uses, these different uses must enter into the local official’s determination of the FMV of the eligible Federal property under paragraph (a)(1) of this section.

*Example:* If a portion of a Federal installation to be valued has road or highway frontage with adjacent properties that are used for residential and commercial purposes, but the rest of the Federal installation is rural and vacant with adjacent properties that are agricultural, the local official must take into consideration the various uses of the adjacent properties (residential, commercial, and agricultural) in determining the FMV of the Federal property under paragraph (a)(1) of this section.

(Authority: 20 U.S.C. 7702)

[62 FR 35414, July 1, 1997]